



Public Service Commission

State of North Dakota

COMMISSIONERS

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sent via regular mail

December 20, 2022

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Mr. Drew Becker
U.S. Fish and Wildlife Service
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Dear Mr. Becker:

The Reclamation Division is conducting a technical review of Revision No. 42 to Surface Coal Mining Permit NAFK-8405 at the Falkirk Mine in McLean County. Revision No. 42 proposes to add 3,359.7 acres in all or portions of Sections 1, 2, 3, and 5 T146N, R82W; and Sections 33, 34, 35, and 36 T147N, R82W to Permit NAFK-8405. This revision also includes plans to mine coal in the N½ of Section 1 of T146N, R82W. Falkirk is in the process of securing authorization to mine federal coal in the NE¼ of Section 2 and the E½ of Section 3 of T146N, R82W and mining cannot occur until federal coal leases have been secured and mine plan approval is authorized by the Secretary of Interior. The Bureau of Land Management (BLM) and Office of Surface Mining (OSM) completed an Environmental Assessment in May of 2021 for an application to lease the federal coal in Sections 2 and 3 and other tracts at the Falkirk Mine for compliance with the National Environmental Policy Act (NEPA).

As required by regulation, the Reclamation Division must make a written finding about whether mining activities may affect proposed, threatened or endangered species, or proposed or designated critical habitat. We believe the proposed surface coal mining and reclamation operations will not jeopardize or adversely affect the continued existence of any currently listed threatened or endangered species or species proposed for listing, or any proposed or designated critical habitat. A species-specific effect determination is attached which explains how we arrive at our preliminary finding. Figure 1 of the attachment depicts the Revision 42 addition area in relation to the existing permit area.

A copy of Revision No. 42 to NAFK-8405 is enclosed for your review. Baseline Fish and Wildlife Resource information for the revision addition area is in Section 2.4 of the permit and pre-mining land use and vegetation information is provided in Section 2.7.

Please review the proposed mining and reclamation plans and let us know by **February 10, 2023**, if your office concurs with our preliminary effects finding. We anticipate recommending Commission approval of Revision 42 in perhaps March of 2023.

If you have any questions, please contact Guy Welch at 701-328-2298 or gwelch@nd.gov.

Sincerely,

Zanna A. Brinkman
Director
Reclamation Division

Enclosures

cc via email only w/o enclosures: Jerry Reinisch (jerry_reinisch@fws.gov)

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Revisions No. 42 to NAFK-8405 Species-Specific Effects Finding

Revision No. 42 proposes to add 3,359.7 acres in all or portions of Sections 1, 2, 3, and 5 of T146N, R82W and Sections 33, 34, 35, and 36 of T147N, R82W, McLean County to Permit NAFK-8405. This revision also includes plans to mine coal in the N½ of Section 1 of T146N, R82W. Falkirk is in the process of securing authorization to mine federal coal in the NE¼ of Section 2 and the E½ of Section 3 of T146N, R82W. Current mining plans indicate sediment ponds are to be constructed on portions of the federal coal but mining cannot occur until coal leases have been secured and mine plan approval is authorized by the Secretary of Interior. The surface acreage being added to the permit with Revision 42 is private and state owned. The Bureau of Land Management (BLM) and Office of Surface Mining (OSM) completed an Environmental Assessment in May of 2021 to lease the federal coal in Sections 2 and 3 and other tracts at the Falkirk Mine for compliance with the National Environmental Policy Act (NEPA). The NEPA analysis concluded that there would be no effect to the Dakota skipper, Rufa Red Knot, Piping Plover, or the Piping Plover designated critical habitat and that leasing the federal coal may affect, but not likely to adversely affect the Northern Long-Eared Bat, whooping crane, and pallid sturgeon. **Figure 1** depicts the Revision No. 42 addition area in relation to the existing permit area.

The acreage being added to the permit with Revision No. 42 includes 2,413.9 acres of cropland, 213.9 acres of hayland, 62.9 acres of conservation reserve program (CRP) cropland, 311.1 acres of native grassland, 106.3 acres of roads, 24.6 acres of shelterbelt, 182.4 acres of wetlands, 1.3 acres of woodlands, 0.6 acres of industrial land, and 43.0 acres of farm facilities. The wetland acreage includes 3 semi-permanent wetlands (47.8 acres), 40 seasonal wetlands (78.4 acres), and 197 smaller temporary wetlands (56.2 acres) that may be cultivated since most are in cropland fields. The native grassland is located primarily in the S½ of Section 36 adjacent to a farmstead and most of this area will not be affected by mining activities. The Reclamation Division requires that all disturbed wetlands be replaced on an acre-for-acre basis and Falkirk usually attempts to replace the pre-mining acreage of shelterbelt and native grassland acreage.

The USFWS IPaC, Information for Planning and Consultation, website identifies four threatened or endangered species potentially occurring in the Revision No. 42 addition area. These species are the Piping Plover, Rufa Red Knot, Whooping Crane, and Dakota Skipper. The IPaC site does not identify any species proposed for listing in the revision addition area but the Monarch Butterfly is a Candidate species. McLean County contains designated critical habitat for the Piping Plover, but none is identified in the Revision 42 addition area. Likewise, IPaC identifies two additional species, the Northern Long Eared Bat and Pallid sturgeon, in McLean County but neither of these species are potentially present in the Revision No. 42 addition area — according to IPaC, December 9, 2022.

Following is the Reclamation Divisions' preliminary finding regarding surface coal mining activities in the Revision No. 42 addition area and its effects on threatened, endangered, and proposed species and proposed and designated critical habitat.

Piping Plover

The Piping Plover is a migratory bird that may be present in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands, sandbars, and shorelines associated with major river systems. In McLean County North Dakota, this species can be found along the Missouri River and Lake Sakakawea, which are areas designated as critical habitat. The designated critical habitat at Lake Audubon and near Turtle Lake is only a few miles from the area being added to the permit with Revision No. 42. There are no wetlands with barren shorelines in or adjacent to the Revision No. 42 addition area. Wetland classification and sampling data in the permit indicates that the semi-permanent

wetlands are palustrine emergent freshwater basins with water chemistry in the slight to moderately brackish range. It is conceivable that Piping Plover habitat could be created by activities associated with mining and reclamation. During years when water in Lake Sakakawea was high, this species was found nesting on barren graded overburden at the Falkirk Mine. Nest sites are protected from mining activities when found and the Reclamation Division and USFWS are notified. The Reclamation Division concludes that the Revision No. 42, and the adjacent areas do not contain designated, suitable, or potential habitat for this species, and the proposed mining and reclamation activities will have “**no effect**” on the continued existence of the Piping Plover and “**no effect**” on Piping Plover designated critical habitat.

Rufa Red Knot

The Rufa Red Knot is a robin-sized shorebird that migrates from south to north every spring and repeats the trip in reverse every fall from far-flung sites throughout the Western Hemisphere. This species is one of the longest-distance migrants in the animal kingdom. Rufa Red Knots begin their life cycle in the Arctic tundra and undertake their first migration on their own. Migration and wintering habitats include both high-energy ocean or bay front areas as well as tidal flats in more sheltered bays and lagoons. Available information suggests that Rufa Red Knots use inland saline lakes as stopover habitat in the Northern Great Plains. The species range map includes portions of central North Dakota. In July of 2021, the USFWS proposed to designate critical habitat for the Rufa Red Knot in areas outside of North Dakota. The Revision No. 42 addition area does not contain habitat for the Rufa Red Knot, and the Commission finds that the proposed mining and reclamation activities will have “**no effect**” on the continued existence of Rufa Red Knot species.

Dakota Skipper

The Dakota skipper is a small butterfly that requires high quality mixed or tallgrass prairie communities. The two types of prairies provide suitable habitat for this species. A moist lowland bluestem prairie habitat type with wood lily, harebell, and smooth camas and a relatively dry upland prairie habitat type found on ridges and hillsides that are dominated with bluestem grasses, needlegrasses and desirable native forbs, such as purple coneflower. Although there is no designated critical habitat for Dakota skippers in McLean County, McLean County is included on the list of counties where this species could exist in North Dakota according to the USFWS. The 311.1 acres of native grassland being added to the permit with Revision No. 42 are in the southwest corner of the NE $\frac{1}{4}$ of Section 33 (14.5 acres) and the S $\frac{1}{2}$ of Section 36, T147N, R82W (296.5 acres). The grassland in Section 33 is isolated idle land that has not been managed with haying or grazing in recent years. Smooth brome grass and crested wheatgrass have displaced the native grass species on a significant portion of this tract. The loamy ecological site was sampled in 2019 and these invasive grass species comprised 91 percent of the composition by weight. The thin sands ecological site on this tract, 3.8 acres, supports needle and thread grass, little bluestem, and native forbs but given the size and isolated nature of this tract, it is not considered suitable Dakota skipper habitat. The native grassland in the S $\frac{1}{2}$ of Section 36 is surrounded by cropland and hayland. The tract is dominated by loamy (131.4 acres), thin loamy (56.8 acres), and loamy overflow (51.6 acres) ecological sites. This tract is owned by the ND Department of Trust Lands and is managed with cell grazing. Production sampling data from 2019 indicates that this native grassland is in fair or poor ecological condition. Kentucky bluegrass comprised approximately 65 percent of the species composition by weight on the loamy and loamy overflow ecological sites and over 43 percent of the yield on the thin loamy site. Little bluestem was not listed as present in the productivity sampling data. In 2019 the Falkirk Mine hired KDK Consulting to assess the native grassland in this revision addition area, and other permitted

lands at the Falkirk Mine, to determine if any areas contained habitat capable of supporting the Dakota skipper. The results of the assessment were provided in the 2018-2019 Wildlife Monitoring Report for the Falkirk Mine. The report concluded that the native grassland in the S½ of Section 36, T147N, R82W did not contain plant communities suitable for the Dakota skipper. The only native grassland bordering the Revision No. 42 addition area is in the SW¼ of Section 28, T147N, R82W. The Reclamation Division concludes that mining and reclamation activities in the Revision No. 42 addition area will have “**no effect**” on the continued existence of the Dakota skipper.

Whooping Crane

The permit area lies within the principal migration route of the whooping crane and the revision addition area is only a few miles from Audubon National Wildlife Refuge. The Audubon National Wildlife Refuge is reportedly occasionally used by migrating whooping cranes and areas around the refuge could potentially be used as stop-over and foraging purposes. The Revision 42 addition area and the adjacent area contains semi-permanent, seasonal wetlands, and temporary wetlands that could potentially be used by migrating whooping cranes but the likelihood of whooping cranes occurring in the area is low. Whooping cranes have not been observed flying over or utilizing lands near the Falkirk Mine. All wetlands affected by mining activities are replaced on an acre-for-acre basis and they are designed to function as they did prior to mining. It has been well documented that whooping cranes avoid human disturbances. The city of Underwood and Highway 83 are located west of the permit area and Highway 200 passes through Permit NAFK-8405. Reclaimed and undisturbed lands in the permit and adjacent areas are used intensively for agricultural purposes and active mining operations are occurring south of the Revision No. 42 addition area. The Reclamation Division conservatively concludes the mining and reclamation activities in the Revision No. 42 addition area **may affect, but not likely to adversely affect** the whooping crane.

Figure 1. Revision No. 42 addition area

